# In the Supreme Court of the United States

OCTOBER TERM, 1971

---

No. 71-839

PAUL P. ERLENBAUGH, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

This petition concerns five cases in the United States District Court for the Northern District of Indiana, in which petitioners were convicted on charges of substantive violations of the Travel Act (18 U.S.C. 1952) and conspiracy (18 U.S.C. 371) to violate that Act. The charges were based on the operation of various bookmaking establishments, all of which used an interstate facility (a railroad) to obtain copies of scratch sheets that facilitated the illegal enterprises. The cases were consolidated for

oral argument in the court of appeals, and that court affirmed as to all petitioners in a comprehensive opinion (Pet. App. 1-15).

The facts set forth and petitioner's contentions are fully answered in the opinion below, on which we principally rely. We note in addition that *Rewis* v. *United States*, 401 U.S. 808, relied on by petitioners (Pet. 14-16), is readily distinguishable from the instant case. In *Rewis*, the Court held that "Congress did not intend that the Travel Act should apply to criminal activity simply because that activity is at times patronized by persons from another State" (401 U.S. at 812). Here the evidence showed that there was a regular, intentional use of an interstate facility to obtain the scratch sheets, the prompt arrival of which was essential to the successful conduct of the bookmaking operation. (See, *e.g.*, Kelly Trial Transcript, pp. 99, 134; White Trial Transcript, pp. 134; Pet. App. 3-4.)

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

FEBRUARY 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 487389 501